IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE SEVENTEENTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE HON''BLE MR JUSTICEM.H.S. ANSARI

and
THE HON'BLE MR JUSTICE T.CH.SURYA RAO

WRIT PETITION NO : 23538 of 2004

Between:

M/s.LMJ International Limited, Shantinagar, Malkapuram,
Visakhapatnam rep., by its Branch Manager, Mr.P.Chandra Sekhar.

..... PETITIONER

AND

1 The Commercial tax Officer, Gajuwaka Circle, Visakhapatnam.
2 The Appellate Deputy Commissioner (CT), Visakhapatnam Division, Visakhapatnam.
3 The Additional Commissioner (CT) Legal, Andhra Pradesh, Nampally, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ of Mandamus or any other appropriate writ or order or direction declaring the action of the 1st respondent in attaching and proposing auction of wheat for recovery of disputed tax during pendency of appeals/revisions filed by the petitioner as arbitrary and unjustified and restrain the 1st respondent from collecting the balance disputed tax of Rs.30,03,826/- for the assessment year 2000-01 under the APGST & CST Acts pending disposal of the appeals before the 2nd respondent.

Counsel for the Petitioner:MR.P.SRINIVASA REDDY

Counsel for the Respondent Nos.1 to 3: SPL. GP FOR TAXES

The Court made the following :

O R D E R: (PER MHSA.J)

Heard the learned counsel for the respective parties.

It is brought to our notice that Respondent No.3 has rejected the application filed for stay of recovery of tax pending disposal of the appeals before the 2nd respondent. It is also stated that for recovery of the disputed tax the respondents are proposing to auction the commodity (wheat) on 20.12.2004. It is in respect of these that the petitioner has claimed the reliefs in the instant writ petition.

It is further represented that part payment has been made and balance disputed tax is Rs.30,03,826/- for the assessment year 2000-2001 under APGST & CST Acts, in respect whereof the Appeal is pending disposal before the 2nd respondent.

In such a view of the matter, if the petitioner deposits 50% of the disputed tax out of the total demand of Rs.42,03,826/- towards APGST & CST Act., after giving credit to the amounts already paid towards tax by the petitioner, the appeals pending before the 2nd respondent shall be heard and disposed of in accordance with law, without insisting upon the balance disputed tax. Consequently, upon the petitioner making deposit as aforestated within a period of four weeks from date, there shall be stay of the proposed auction scheduled on 20.12.2004. With regard to recovery of tax due,

same shall abide by the orders that may be passed in the appeals pending before the 2nd respondent. It is further directed that if the petitioner furnishes bank guarantee for the balance tax in dispute, to the satisfaction of the 1st respondent, the attachment shall be vacated and the respondents shall release custody of the goods in question, namely, wheat to the petitioner.

The writ petition is accordingly disposed of. No costs.

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MH.S.ANSARI.J.,

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T.CH.SURYA RAO.J.,

Dt.17.12.2004

Communicate copy by 18.12.2004.

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ASSISTANT REGISTRAR

To

1 The Commercial tax Officer, Gajuwaka Circle, Visakhapatnam.
2 The Appellate Deputy Commissioner (CT), Visakhapatnam Division, Visakhapatnam.

3 The Additional Commissioner (CT) Legal, Andhra Pradesh, Nampally, Hyderabad.

4 2CCs to the G.P. for Taxes, High Court of A.P.Hyderabad(OUT)

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